

1       general confines of Second Thursday, the idea  
2       being that no alleged wrongdoers would  
3       benefit, that the money would be put into an  
4       escrow, that the money that has already been  
5       paid is being divided up by the Bankruptcy  
6       Court.

7                   I don't understand how there can  
8       be any concern with the wrongdoers benefitting  
9       under those circumstances, and these  
10      applications could be processed. But  
11      something needs to go to the commission. We  
12      filed a request for reconsideration. They  
13      didn't act on it. We filed a request for  
14      expedited action. They didn't act on it.  
15      That was early last fall. We can't get any  
16      movement.

17                   JUDGE SIPPEL: It sounds to me  
18      like you are looking for the presiding Judge  
19      to nudge the Commission. I don't nudge  
20      commissions. I mean, it is just not going to  
21      work. There is not a thing -- If somebody  
22      comes up with something I can do, I will

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1 listen, but I don't see anything that I can  
2 do. You have got a situation with the  
3 Commission.

4 You have a lesser situation, I  
5 think, with me, in light of your status, but  
6 you don't have to participate in this Issue G.  
7 I am not going to let Issue G hold up the  
8 processing of the consideration of Second  
9 Thursday. I am just saying, if there is down  
10 time here, which apparently there is going to  
11 be some because we are waiting for the  
12 finality of what is going on in the  
13 bankruptcy, why don't we let the people who  
14 are concerned with that get to work. That's  
15 all. That is all I can possibly say. What  
16 more can I say.

17 Anybody else have anything to add?

18 MR. ZDEBSKI: Your Honor, Charlie  
19 Zdebski for Duquesne Light.

20 JUDGE SIPPEL: Yes, sir?

21 MR. ZDEBSKI: There are Second  
22 Thursday cases where individual license

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1 applications have been approved without the  
2 entire reorganization plan being approved, and  
3 maybe that is the kind of thing that Mr.  
4 Richards is referring to. I wonder whether  
5 Your Honor would consider that approach?

6 JUDGE SIPPEL: Ms. Kane?

7 MS. KANE: Obviously, we don't --  
8 I am not sure that we would agree with it  
9 being done in a piecemeal manner, and we are  
10 still waiting for the ultimate question of  
11 what are these licenses valued at.

12 If Second Thursday is not  
13 applicable, then the case law is very clear  
14 that these licenses cannot be transferred to  
15 anybody while there is a hearing pending. The  
16 question of whether Second Thursday is  
17 applicable as a process and whether or not it  
18 actually proceeds to a resolution as to those  
19 licenses is tantamount to -- is necessary in  
20 order to figure out whether certain contracts  
21 can go forward.

22 JUDGE SIPPEL: Mr. Catalano.

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1                   MR. CATALANO: The point I would  
2 like to make is, in the context of Second  
3 Thursday, the earlier case law does not apply  
4 to partition licenses. In this case, we have  
5 a separate license, as counsel has pointed  
6 out, and as I pointed out earlier, in the  
7 Bankruptcy Court proceeding, the court made a  
8 finding that the valuation was fair and it was  
9 a good faith, arms length transaction.

10                   It would seem to me, on that  
11 record there would be a possibility to proceed  
12 on the individual license applications as  
13 individual license applications that have now  
14 been taken out of the entire license package,  
15 if you will, that is being held by Maritime.

16                   MS. KANE: Under our case law,  
17 Your Honor, I don't think that you can just do  
18 a random assignment of a license that is  
19 currently in hearing on issues about whether  
20 the licensee was qualified to hold that  
21 license in the first place.

22                   There is either a hearing process

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1 or there is a Second Thursday exception, and  
2 I am not hearing any basis for why that one  
3 license, in the absence of having true and  
4 correct and full information on the valuation  
5 of the whole estate, should be handled  
6 separately.

7 JUDGE SIPPEL: What I am hearing  
8 is -- Yes, I hear you, and I think what you  
9 are asking is very creative, creative in the  
10 sense of Second Thursday and how an agency  
11 operates. But for the life of me, I don't see  
12 how you would get final approval of that until  
13 these other issues are resolved.

14 I don't think that the Commission  
15 would approve of anything that was going out  
16 piecemeal. Now that is my view. I am not  
17 making that determination, but if you wanted  
18 to apply for some kind of special relief to  
19 the Commission and argue that point, that the  
20 Bankruptcy Court has no problem with your  
21 particular situation and maybe others  
22 similarly situated situations, and you want

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1 some action on your earlier request for  
2 whatever you are requesting, basically  
3 approval of a license --

4 MR. CATALANO: It would be  
5 approval of the individual licenses.

6 JUDGE SIPPEL: Yes, I understand.

7 MR. CATALANO: -- and within the  
8 context of Second Thursday, we would meet the  
9 standards. No wrongdoer is being benefitted.  
10 The value is -- There is no excess value, and  
11 there was a good faith finding by the court.

12 JUDGE SIPPEL: Now hear me. Maybe  
13 I am not making myself clear. There are two  
14 questions. There is the question of the  
15 overall application of Second Thursday to this  
16 particular situation. The situation requires  
17 bankruptcy approval of a plan.

18 So the plan comes into it.  
19 Valuation is in the plan. All that has to be  
20 looked at. You want your license situation  
21 segregated from that, because -- and you made  
22 a good point -- basically, it has already been

1       cleared by the Bankruptcy Court.

2               Whatever the relief is that you  
3       are seeking from the Commission -- I believe  
4       you have something pending up here, don't you,  
5       either as an individual or as a group? Have  
6       you gone to the Commission at all?

7               MR. CATALANO: What is pending is  
8       the reconsideration that all the applicants  
9       are in requesting the Commission to transfer  
10      the license. That is pending, that issue, but  
11      that is a separate track to get the license  
12      transferred, Your Honor.

13              JUDGE SIPPEL: What I am saying is  
14      that I don't think that you are absolutely  
15      left without a remedy, but how successful the  
16      remedy would be -- and the remedy would be to  
17      seek some kind of -- I wanted to say  
18      emergency, but some kind of immediate relief  
19      from the Commission on the basis of what you  
20      have laid out, and try to expedite the request  
21      for reconsideration that way or something like  
22      that. But there is nothing. I can't start

1       piecing it out that way, because I know it is  
2       going to just be sent right back to me. I am  
3       sure it will be.

4               So it is all or nothing here, as  
5       far as Second Thursday is concerned, unless  
6       the designation were to change, unless I am  
7       directed to do otherwise. And I am not trying  
8       to hold it back. I am trying to get in the  
9       position where it is put together so that it  
10      is not going to come back to me.

11              MR. ZDEBSKI: Your Honor, may I  
12      add in?

13              JUDGE SIPPEL: Yes, please. Your  
14      name again? I know you are from Duquesne.

15              MR. ZDEBSKI: Charlie Zdebski for  
16      Duquesne Light. The Enforcement Bureau has  
17      been pushing to move ahead in this proceeding  
18      and has questioned what has gone on in the  
19      Bankruptcy proceeding, including the valuation  
20      and the process of approval.

21              One way for the Enforcement Bureau  
22      to get that information and to be involved in

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1 the valuation question is to participate in a  
2 bankruptcy proceeding. I think, as Mr.  
3 Catalano said before, they have the right to  
4 do it. If I were the Enforcement Bureau, I  
5 guess I would avoid doing it, too, so that I  
6 could take a second bite at it when it comes  
7 back here, but that is holding up the process.

8 We have people who are testifying,  
9 people who are being deposed, and the  
10 valuation issue is squarely before the  
11 Bankruptcy Court and will be decided there.  
12 The Enforcement Bureau is deciding it will  
13 wait to come back here and then look at it in  
14 the context of Second Thursday.

15 So we have proposed a creative  
16 solution to get our applicants with a need for  
17 licenses for critical infrastructure out of  
18 this situation, and what the Enforcement  
19 Bureau is proposing is going to hold up the  
20 process even longer.

21 JUDGE SIPPEL: The Enforcement  
22 Bureau is just doing its job. There is all

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1 kinds of reasons why the Bureau decision --  
2 the prosecutory discretion of the Bureau would  
3 be whether or not to try and -- First of all,  
4 it has to move to appear in the bankruptcy  
5 proceeding. I am not sure s a Judge that  
6 bankruptcy judge would particularly like  
7 getting that message, and that is a management  
8 decision in the discretion of the Bureau or  
9 the Commission, not me.

10 So talk to Ms. Kane, but I don't  
11 think -- Well, I have said as much as I can.  
12 I can't do anything for you here.

13 MS. KANE: Your Honor, I think we  
14 have been extremely active in trying to move  
15 this case forward in this hearing, in this  
16 forum, which is where we are a party, and I  
17 think we find it offensive that we are now  
18 being accused of somehow trying to hold up  
19 this hearing and this process, because we are  
20 not participating for some prosecutorial  
21 reason or management decision as a Commission,  
22 because it is not the Enforcement Bureau that

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1 would make an appearance in front of the  
2 Bankruptcy Court. It would be the Commission,  
3 and that is a totally different entity than us  
4 -- and that we are somehow trying to hold up  
5 the process here by not participating there.

6 The reality is that there are  
7 overlapping issues between the two, because of  
8 the fact that there is a bankruptcy  
9 proceeding, and Maritime intends to seek  
10 Second Thursday treatment.

11 There is an overlapping series of  
12 issues, which is why, if you recall, Your  
13 Honor, you allowed certain discovery  
14 concerning the valuation and concerning at  
15 least some identification of who the creditors  
16 were as part of this hearing process during  
17 our last prehearing conference in October.

18 Now with regard to that, we did  
19 get some of the valuation information, but we  
20 did not get what we thought we were going to  
21 get, which was an identification of not only  
22 who the creditors were, but what their

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1 relationships were to Maritime. How did they  
2 become creditors? What is their -- Why was it  
3 that they lent money to Mr. DePriest? What is  
4 their relationship, their personal  
5 relationship or professional relationship with  
6 the at least named wrongdoers, in order to  
7 determine whether or not some of these  
8 innocent creditors are, in fact, not innocent  
9 for the very purposes of Second Thursday?

10 JUDGE SIPPEL: What kind of  
11 discovery are you going to need for that? Are  
12 you going to depose all these creditors?

13 MS. KANE: We would like at some  
14 point at least to be deposing the Maritime  
15 principals, but obviously, we don't want to do  
16 that piecemeal. So since Your Honor has  
17 allowed discovery to go forward on Issue G and  
18 at least some limited amount of discovery that  
19 was related to Second Thursday as part of our  
20 last prehearing conference, we wanted to have  
21 a single deposition and try to keep all these  
22 depositions together. But since we have no

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1 movement yet on Issue G discovery, we haven't  
2 been able to pursue discovery of Maritime  
3 principals on some of these other issues as  
4 well.

5 JUDGE SIPPEL: Well, you are  
6 trying to shoehorn Issue G discovery into the  
7 bigger picture, seems to me.

8 MS. KANE: Well, I am not trying  
9 to shoehorn it, Your Honor. It is a separate  
10 issue, but the reality is that I have no  
11 doubt, if we tried to take multiple  
12 depositions of Mr. DePriest, either on Issue  
13 G and/or on issues that might relate to the  
14 Second Thursday, that they would put up some  
15 sort of objection to that.

16 So we were trying to get all of  
17 our discovery ducks in a row before we deposed  
18 some of these witnesses.

19 JUDGE SIPPEL: To play that down,  
20 we could offer them a deal, either two for  
21 nothing. You can answer questions about the  
22 whole schmeer, the whole thing, or you are

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1 going to get questions on just Issue G. It is  
2 up to you. It is up to the Maritime parties  
3 whether or not they want to run the risk of  
4 being hit with double depositions. I don't  
5 know.

6 If it is a question of money from  
7 the standpoint of the Bureau's efficiency,  
8 then I am afraid you are going to have to  
9 wait. I am not sure what the answer to that  
10 is, but I am not going to give you relief on  
11 that basis alone. If you want to take a  
12 deposition from somebody at Maritime on the  
13 issue of Issue G, I have no problem with  
14 granting that, permission to do that.

15 MS. KANE: No, I understand that,  
16 Your Honor, but we have no discovery yet on  
17 Issue G. So it wasn't prudent to go forward  
18 with a deposition on those issues until that  
19 discovery is in front.

20 JUDGE SIPPEL: I understand. I  
21 didn't mean to say that that is what you  
22 should be doing. I am simply saying that is

1 the -- Now what discovery is needed on Issue  
2 G that you haven't already undertaken? You  
3 have already undertaken it, but you haven't  
4 gotten the answers?

5 MS. KANE: We have -- As you  
6 recall in the last prehearing conference, we  
7 have worked with Mr. Havens and we worked with  
8 their counsel to provide Your Honor with a  
9 joint motion for discovery on Issue G. It  
10 included a series of document requests and  
11 interrogatories.

12 We filed that, I believe, sometime  
13 in early December. You had asked to approve  
14 of that discovery before maritime would  
15 respond to it. Now in December Maritime  
16 objected to the discovery not in its scope,  
17 but only to the fact that apparently Mr.  
18 Havens was seeking similar discovery in other  
19 forums. But in that pleading, Maritime said  
20 they were willing to provide the information.

21 They have not provided it in  
22 absence of an order from Your Honor.

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1 JUDGE SIPPEL: All right.  
2 Consider that done. You have an order.  
3 Maritime has an order to proceed with giving  
4 the Bureau everything they have asked for that  
5 is not objected to. Just do it, but I will  
6 get an order out on that today or tomorrow.  
7 That is a failure on my part. I understand.  
8 I have been preoccupied, though.

9 MS. KANE: And we understand that,  
10 Your Honor. The other issue --

11 JUDGE SIPPEL: I even had a  
12 friend's funeral I had to go to yesterday.

13 MS. KANE: Oh, I am sorry about  
14 that.

15 JUDGE SIPPEL: Well, this is how  
16 things happen, you know.

17 MS. KANE: Well, that prompted our  
18 motion to extend the deadline, which was last  
19 Friday, for the discovery deadline for Issue  
20 G, and I think now we are at a point, Your  
21 Honor, where we need to set a new discovery  
22 deadline for the Issue G discovery, both of

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1 Maritime and Pinnacle Wireless, which you have  
2 added in as a party, and maybe any other  
3 parties who may have information. We don't  
4 know yet, because we haven't received  
5 discovery from Maritime as to whether any of  
6 the other parties in the hearing may have  
7 relevant discovery relevant to Issue G.

8 JUDGE SIPPEL: Any other parties  
9 in this proceeding?

10 MS. KANE: They may.

11 JUDGE SIPPEL: Have you asked  
12 them?

13 MS. KANE: Well, no, we haven't,  
14 Your Honor. We served discovery on parties  
15 with regard to very basic information early in  
16 this case, and they have refused to respond to  
17 that. So we hadn't proceeded with other party  
18 discovery until we got discovery from  
19 Maritime.

20 JUDGE SIPPEL: Well, wait a  
21 minute. I am not talking about that. I am  
22 talking about -- Do you have reason to believe

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1       that any of these parties being represented  
2       here, you know, the assignment parties -- I  
3       don't know what you want to call them -- that  
4       they have some knowledge about Issue G?

5               MS. KANE:    I personally don't,  
6       Your Honor, because we have nothing to  
7       indicate that, but then again we did not know  
8       that Pinnacle Wireless would have discovery.  
9       They weren't even a party to this case until  
10      they moved for intervention.

11             JUDGE SIPPEL:  It is a whole new  
12      ballgame, but they have explained exactly why.  
13      They have got a good reason.

14             MS. KANE:  Agreed, Your Honor.

15             JUDGE SIPPEL:  I've got to be able  
16      to safely get up and down the Jersey Turnpike,  
17      you know.

18             MS. KANE:  Agreed, Your Honor, but  
19      we have basically been on hold waiting for  
20      Maritime to respond to the discovery on Issue  
21      G, and that --

22             JUDGE SIPPEL:  Well, I want to

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1 move that along. I told you that.

2 MS. KANE: I understand that. We  
3 assume that will inform our decisions going  
4 forward in terms of discovery of other either  
5 parties or nonparties.

6 MR. HAVENS: Some of the parties  
7 are buying site based licenses.

8 JUDGE SIPPEL: Say that again.

9 MR. HAVENS: Your Honor, some of  
10 the applicants' parties are purchasing site  
11 based licenses. In regard to site based  
12 licenses, therefore, they should have  
13 information on what they are purchasing.

14 JUDGE SIPPEL: Oh, I see what you  
15 are saying. Let me just ask the question in  
16 general. Does anybody -- Do any of these  
17 applicant assignment parties have any  
18 information on Issue G? Do you know what  
19 Issue G is? It is basically -- It was  
20 construction of a particular location. I am  
21 getting quizzical looks to denials, shaking  
22 heads.

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1 I could get something added to my  
2 order and say that they have an obligation to  
3 come forward if they have any information on  
4 that issue, but again I don't want to start  
5 poking around without having a basis for doing  
6 it on fact finding.

7 Pinnacle should be able to give a  
8 lot of information to you. They laid it out.

9 MS. KANE: That is only on two of  
10 the site based licenses, Your Honor. There  
11 are other licenses that are at issue in the  
12 construction.

13 JUDGE SIPPEL: IN the Issue G  
14 issue?

15 MS. KANE: In the Issue G issue.  
16 I believe there is something like eight or  
17 nine site based licenses at issue, as to  
18 whether or not they have been constructed  
19 and/or discontinued.

20 MR. HAVENS: I believe all of them  
21 are subject to Issue G. There is no  
22 limitation stated on that in the hearing

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1 designation order, and there are site based  
2 licenses throughout the country.

3 JUDGE SIPPEL: Mr. Havens is  
4 talking. I am talking to the court reporter.

5 Well, there has got to be a better  
6 way to get at this than what we are talking  
7 about here, but there has got to be some  
8 specification worked out. I would ask the  
9 Bureau to undertake that as soon as they  
10 reasonably can.

11 What I am talking about is narrow  
12 down exactly who you have reason to believe  
13 knows something about this issue, and  
14 certainly the site -- any site based location  
15 that is alleged to be a venue for a  
16 construction violation, whatever you want to  
17 call it, would be the most logical place, and  
18 Pinnacle can start its discovery if they are  
19 participating for that purpose, or Pinnacle  
20 can give you -- Have you interviewed Pinnacle  
21 at all?

22 MS. KANE: We haven't yet, Your

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1 Honor. We were waiting until you made them a  
2 party last week. So we are --

3 JUDGE SIPPEL: They are a party.

4 MS. KANE: I understand. We are  
5 in the process of preparing written discovery  
6 for Pinnacle, and we expect them to be able to  
7 produce that information.

8 JUDGE SIPPEL: It is perfectly  
9 proper for them to -- You need to pick up the  
10 phone and talk to the attorneys, talk to the  
11 principals, you know, if the attorney agrees,  
12 and get as much information that way as you  
13 can, but certainly proceed with the discovery.  
14 But they seem to be willing to -- They seem  
15 to be very willing to cooperate with you.

16 MS. KANE: They have been, Your  
17 Honor.

18 JUDGE SIPPEL: Go to it.

19 MR. PLACHE: Your Honor, just to  
20 clarify. Matthew Plache speaking for  
21 Pinnacle.

22 JUDGE SIPPEL: Thank you.

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1 MR. PLACHE: There is one license,  
2 one site based license, that Pinnacle leases  
3 from Maritime, and it is station WRV 374.

4 JUDGE SIPPEL: Station RV?

5 MR. PLACHE: I think it is WRV  
6 374.

7 JUDGE SIPPEL: As in Victor?

8 MR. PLACHE: 374.

9 JUDGE SIPPEL: Where is that  
10 located?

11 MR. KELLER: Has multiple sites.

12 MR. PLACHE: Multiple sites, yes.

13 MR. HAVENS: That is the Atlantic  
14 Coast multiple station license.

15 JUDGE SIPPEL: Multiple sites on  
16 the Atlantic coast?

17 MR. HAVENS: Yes, sir.

18 JUDGE SIPPEL: Okay, thank you,  
19 Mr. Havens.

20 MR. PLACHE: Our understanding is  
21 Maritime does have a lot of other site based  
22 licenses, and Maritime has information on the

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1 construction of the licenses as well. But  
2 Pinnacle does have information on what it has  
3 done with this particular license.

4 JUDGE SIPPEL: But there is a lot  
5 more. There is a lot more than just what  
6 Pinnacle knows.

7 MR. PLACHE: I can't speak for  
8 Maritime, but --

9 JUDGE SIPPEL: No, no, I am not  
10 thinking about Maritime, but I mean there are  
11 other sites out there that you really don't  
12 have information on.

13 MR. PLACHE: Other stations that  
14 Pinnacle does not have an interest in.

15 JUDGE SIPPEL: So you would have a  
16 lesser amount of information on those,  
17 obviously, if any.

18 MR. PLACHE: I would probably have  
19 as much as -- maybe less than the Enforcement  
20 people.

21 JUDGE SIPPEL: Would you be  
22 willing to have one of your principals sit

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1 down with Bureau counsel and --

2 MR. PLACHE: Absolutely. We  
3 would like to do that, and I will arrange it  
4 with Ms. Kane.

5 JUDGE SIPPEL: Fine.

6 MR. PLACHE: We are willing and  
7 happy to cooperate.

8 JUDGE SIPPEL: I am going to  
9 assume that that is being undertaken, and then  
10 is that satisfactory to you now as a starter,  
11 obviously?

12 MS. KANE: Absolutely, Your Honor.  
13 We were planning on starting that. Obviously,  
14 we would like to also know what the general  
15 timeline is for us to obtain all of this  
16 discovery.

17 JUDGE SIPPEL: Well, that is what  
18 I am going to --

19 MR. MR. KELLER: Your Honor,  
20 excuse me. May I? Before we get on to the  
21 general timeline, I just wanted to say a  
22 couple of quick -- clarify a couple of quick

**NEAL R. GROSS**

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